

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAURICE BOWMAN,

Defendant.

ORDER

07-cr-139-bbc

On April 12, 2011, defendant Maurice Bowman filed a motion pursuant to 18 U.S.C. § 3582(c)(2) and U.S.S.G. § 1B1.10. In his motion he asserted that he is entitled to a sentence reduction now that the sentencing guidelines have been amended in accordance with The Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2(a)(2), 124 Stat. 2372 (2010), to reflect the changes in the amounts of crack cocaine that trigger mandatory minimum sentences. Dkt. #231. I denied his motion in an order entered on April 13, 2011. Dkt. #232. Now defendant has filed a notice of appeal. He has not paid the \$455 fee for filing his notice of appeal which is required if he is to take an appeal from the denial of a § 3582 motion. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Defendant had court-appointed counsel in the criminal proceeding against him. Therefore, he can proceed in forma pauperis on appeal unless I find that his appeal is taken in bad faith. In this case a reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. As I explained in the April 13, 2011 order, defendant is not eligible for a sentence reduction under § 3582 because the Fair Sentencing is not retroactive. Even if it were, defendant would not be entitled to any reduction in his sentence because the conspiracy in which he participated involved far more than the 4.5 kilograms of crack cocaine now required for an offense level of 38. Therefore, I will deny defendant’s request to proceed in forma pauperis on appeal.

Pursuant to Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court’s denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant Maurice Bowman's request for leave to proceed in forma pauperis on appeal is DENIED. I certify that defendant's appeal is not taken in good faith. Defendant has the right to appeal this order certifying his appeal as not taken in good faith.

Entered this 9th day of May, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge